Calendar No. 268

99TH CONGRESS
1st Session

SENATE

REPORT
99-121

TO CLARIFY THE TREATMENT OF MINERAL MATERIALS ON PUBLIC LANDS

JULY 31 (legislative day, JULY 16), 1985.—Ordered to be printed

Mr. MCCLURE, from the Committee on Energy and Natural Resources, submitted the following

REPORT

[To accompany S. 811]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 811) to clarify the treatment of mineral materials on public lands, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE

The purpose of S. 811 is to amend section 4 of the Act of July 23, 1955, as amended, to specifically authorize the United States to dispose of mineral materials located on unpatented mining claims. Further, S. 811 provides that if at any time the mining claimant requires more mineral material for his mining operations than is available after the United States has disposed of mineral material from his claim, he shall be entitled, free of charge, to mineral material substantially equivalent to that estimated by the disposing agency to have been disposed of from the claim. Such mineral material shall be from the nearest mineral material site administered by the disposing agency. In addition, the bill specifically limits the use of mineral materials by the mining claimant to those from prospecting, mining or processing operations and uses reasonably incident to, or for the construction of buildings or structures in connection with the mining operation.

BACKGROUND AND NEED

Prior to the passage of the Act of July [illegible], 1955, mining claims could be located for sand and gravel and other mineral materials

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under the mining laws, assuming the mining claimant could satisfy the discovery criteria of the mining laws. One of the principal objectives of the 1955 Act was to clarify the scope of a mining claimant's rights to utilize and control "surface resources" found within the limits of the claim. Enactment of such legislation was prompted by the perception that mining claimants had abused the mining laws so as to gain control of surface resources for non-mining purposes such as timber harvesting, the establishment of fishing and hunting camps, limitation of property access, and other residential and commercial purposes. Thus, prior to the passage of the 1955 Act, the United States had no authority to enter a properly located mining claim for the purpose of managing or disposing of vegetative surface resources or mineral materials which the mining claimant had a right to, assuming the claim was valid.

The 1955 Act granted the United States the right to manage and dispose of vegetative surface resources on unpatented mining claims located after July 23, 1955 but prior to issuance of a mineral patent on the claim. The mining claimant's right to such vegetative surface resources was restricted to their use for prospecting, mining or processing operations and uses reasonably incident to, or for the construction of buildings or structure in connection with the operation as authorized by the United States in accordance with sound principles of forest management.

The 1955 Act also granted to the United States the right to "manage other surface resources" on unpatented mining claims located subsequent to enactment but prior to issuance of mineral patent thereto. However, this language has been interpreted as not including the right of the United States or the mining claimant to dispose of surface resources such as sand and gravel and other "common varieties" of mineral materials.

Many Western States are experiencing significant problems in obtaining sand and gravel and other mineral materials from public lands for industrial construction, and road construction and maintenance because much of this land is blanketed with unpatented mining claims. This situation is particularly acute in the area around Moab, Utah where approximately 120,000 unpatented mining claims have been located. Many of these claims were located for uranium during the uranium boom of the early 1970's. While a percentage of these claims may be speculative with respect to uranium of other locatable minerals, witnesses testified that a considerable percentage of these claims do possess significant quantities of mineral materials, including sand and gravel. Unfortunately, without the enactment of S. 811 neither the United States nor mining claimant(s) have the authority to dispose of such mineral materials even where a case can be made that such disposal would not interfere with the enjoyment of rights associated with the mining claim(s).

The Committee believes that there is a need to provide the United States with disposal authority for mineral materials analogous to that which was provided in the 1955 Act for vegetative surface resources. This bill will accomplish that end.

Legislative History

S. 811 was introduced on March 28, 1985 by Senator Jake Garn for himself and Senator Orrin Hatch. It is identical to S. 2157 which was passed by the Senate on August 9, 1984. The House did not act on the bill.

Committee Recommendation and Tabulation of Votes

The Senate Committee on Energy and Natural Resources, in open business session on July 30, 1985, with a quorum present, recommends that the Senate pass S. 811.

The rollcall vote on reporting the measure was 16 yeas, 0 nays, as follows:

YEAS	NAYS
Mr. McClure	
Mr. Hatfield [1]	
Mr. Weicker	
Mr. Domenici [1]	
Mr. Wallop	
Mr. Warner	
Mr. Murkowski	
Mr. Nickles	
Mr. Hecht	
Mr. Evans [1]	
Mr. Johnston	
Mr. Bumpers	
Mr. Ford	
Mr. Bradley	
Mr. Bingaman [1]	
Mr. Rockefeller	

[1] Indicates voted by proxy.

Committee Amendment

The Committee reported S. 811 without amendment.

Cost and Budgetary Consideration

In compliance with paragraph 11(a) of Rule XXVI of the Standing Rules of the Senate, the following estimate of the cost of this measure has been provided by the Congressional Budget Office:

U.S. Congress,
Congressional Budget Office,
Washington, DC, July 30, 1985.

Hon. James A. McClure,
Chairman, Committee on Energy and Natural Resources, U.S. Senate, Dirksen Senate Office Building, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has reviewed S. 811, a bill to clarify the treatment of mineral materials on public lands, as ordered reported by the Senate Committee on Energy and Natural Resources, July 30, 1985. We expect that enactment of this legislation will have no significant impact on the

federal budget and no impact on state and local government budgets.

This bill would allow mining claimants on federal lands to use common materials, such as sand or gravel, on the site of a claim for mining operations. It would also allow the federal government to dispose of such materials if a qualified free user or a willing buyer makes proper application to the Bureau of Land Management (BLM). If, however, BLM should dispose of materials from a mining claimant's site that the claimant later wishes to use, S. 811 would require BLM to make available, at no charge to the claimant, an amount of material substantially equivalent to that disposed of by the agency. Such transactions are not expected to have a significant budget impact.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,

Sincerely,

RUDOLPH G. PENNER.

REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of Rule XXVI of the Standing Rules of the Senate, the Committee finds that there will be no significant regulatory impact incurred in carrying out the provisions of S. 811.

EXECUTIVE COMMUNICATIONS

The Committee did not request any legislative reports or communications regarding S. 811.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of Rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill S. 811, as ordered reported, are shown as follows (existing law proposed to be changed by the insertion of new matter is printed in italic and existing law in which no change is proposed is shown in roman):

(69 Stat. 368; 30 U.S.C. 612)

TO AMEND The Act of July 31, 1947 (61 Stat. 681) and the mining laws to provide for multiple use of the surface of the same tracts of the public lands, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 1 of the Act of July 31, 1947 (61 Stat. 681), is amended to read as follows:

SECTION 1. The Secretary, under such rules and regulations as he may prescribe, may dispose of mineral materials (including but not limited to common varieties of the following: sand, stone, gravel, pumice, pumicite, cinders, and clay) and vegetative materials (including but not limited to yucca, manzanita, mesquite, cactus, and timber or other forest products) on public lands of the United States, including, for the purposes of this Act, land described in the

Acts of August 28, 1937 (50 Stat. 874), and of June 24, 1954 (68 Stat. 270), if the disposal of such mineral or vegetative materials (1) is not otherwise expressly authorized by law, including, but not limited to, the Act of June 28, 1934 (48 Stat. 1269), as amended, and the United States mining laws, and (2) is not expressly prohibited by laws of the United States, and (3) would not be detrimental to the public interest. Such materials may be disposed of only in accordance with the provisions of this Act and upon the payment of adequate compensation therefor, to be determined by the Secretary: *Provided, however,* That, to the extent not otherwise authorized by law, the Secretary is authorized in his discretion to permit any Federal, State, or Territorial agency, unit or subdivision, including municipalities, or any association or corporation not organized for profit, to take and remove, without charge, materials and resources subject to this Act, for use other than for commercial or industrial purposes or resale. Where the lands have been withdrawn in aid of a function of a Federal department or agency other than the department headed by the Secretary or of a State, Territory, county, municipality, water district or other local governmental subdivision or agency, the Secretary may make disposals under this Act only with the consent of such other Federal department or agency or of such State, Territory, or local governmental unit. Nothing in this Act shall be construed to apply to lands in any national park, or national monument or to any Indian lands, or lands set aside or held for the use or benefit of Indians, including lands over which jurisdiction has been transferred to the Department of the Interior by Executive order for the use of Indians. As used in this Act, the word "Secretary" means the Secretary of the Interior except that it means the Secretary of Agriculture where the lands involved are administered by him for national forest purposes or for the purposes of title III of the Bankhead-Jones Farm Tenant Act or where withdrawn for the purpose of any other function of the Department of Agriculture."

SEC. 2. That section 3 of the Act of July 31, 1947 (61 Stat. 681), as amended by the Act of August 31, 1950 (64 Stat. 571), is amended to read as follows:

"All moneys received from the disposal of materials under this Act shall be disposed of in the same manner as moneys received from the sale of public lands, except that moneys received from the disposal of materials by the Secretary of Agriculture shall be disposed of in the same manner as other moneys received by the Department of Agriculture from the administration of the lands from which the disposal of materials is made, and except that revenues from the lands described in the Act of August 28, 1937 (50 Stat. 874), and the Act of June 24, 1954 (68 Stat. 270), shall be disposed of in accordance with said Acts and except that moneys received from the disposal of materials from school section lands in Alaska, reserved under section 1 of the Act of March 4, 1915 (38 Stat. 1214), shall be set apart as separate and permanent funds in the Territorial Treasury, as provided for income derived from said school section lands pursuant to said Act."

SEC. 3. A deposit of common varieties of sand, stone, gravel, pumice, pumicite, or cinders shall not be deemed a valuable mineral deposit within the meaning of the mining laws of the United States

so as to give effective validity to any mining claim hereafter located under such mining laws: *Provided, however,* That nothing herein shall affect the validity of any mining location based upon discovery of some other mineral occurring in or in association with such a deposit. "Common varieties" as used in this Act does not include deposits of such materials which are valuable because the deposit has some property giving it distinct and special value and does not include so-called "block pumice" which occurs in nature in pieces having one dimension of two inches or more.

SEC. 4. (a) Any mining claim hereafter located under the mining laws of the United States shall not be used, prior to issuance of patent therefor, for any purposes other than prospecting, mining or processing operations and uses reasonably incident thereto.

(b) Rights under any mining claim hereafter located under the mining laws of the United States shall be subject, prior to issuance of patent therefor, to the right of the United States to manage and dispose of the vegetative *and mineral material* surface resources thereof and to manage other surface resources thereof (except mineral deposits subject to location under the mining laws of the United States). Any such mining claim shall also be subject, prior to issuance of patent therefor, to the right of the United States, its permittees, and licensees, to use so much of the surface thereof as may be necessary for such purposes or for access to adjacent land: *Provided, however,* That any use of the surface of any such mining claim by the United States, its permittees or licensees, shall be such as not to endanger or materially interfere with prospecting, mining or processing operations or uses reasonably incident thereto: *Provided further, That if at any time the locator requires more mineral material for his mining operations than is available to him from the claim after disposition of mineral material therefrom by the United States subsequent to the location of the claim, he shall be entitled, free of charge, to mineral material for such requirements from the nearest mineral material site administered by the disposing agency which contains mineral material substantially equivalent to that estimated by the disposing agency to have been disposed of from the claim subject to reasonable rules and regulations for the protection of non-mineral resource values including environmental values: Provided further,* That if at any time the locator requires more timber for his mining operations than is available to him from the claim after disposition of timber therefrom by the United States, subsequent to the location of the claim, he shall be entitled, free of charge, to be supplied with timber for such requirements from the nearest timber administered by the disposing agency which is ready for harvesting under the rules and regulations of that agency and which is substantially equivalent in kind and quantity to the timber estimated by the disposing agency to have been disposed of from the claim: *Provided further,* That nothing in this Act shall be construed as affecting or intended to affect or in any way interfere with or modify the laws of the States which lie wholly or in part westward of the ninety-eighth meridian relating to the ownership, control, appropriation, use, and distribution of ground or surface waters within any unpatented mining claim.

(c) Except to the extent required for the mining claimant's prospecting, mining or processing operations and uses reasonably inci-

dent thereto, or for the construction of buildings or structures, in connection therewith, or to provide clearance for such operations or uses, or to the extent authorized by the United States, no claimant of any mining claim hereafter located under the mining laws of the United States shall, prior to issuance of patent therefor, sever, remove, or use any vegetative *and mineral material* or other surface resources thereof which are subject to management or disposition by the United States under the preceding subsection (b). Any severance or removal of timber which is permitted under the exceptions of the preceding sentence other than severance or removal to provide clearance, shall be in accordance with sound principles of forest management.

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Calendar No. 269

99TH CONGRESS
1st Session

SENATE

REPORT
99-122

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NEBRASKA WILDERNESS ACT OF 1985

JULY 31 (legislative day, JULY 16), 1985.—Ordered to be printed

Mr. MCCLURE, from the Committee on Energy and Natural Resources, submitted the following

REPORT

[To accompany S. 816]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 816) to establish the Pine Ridge Wilderness and Soldier Creek Wilderness in the Nebraska National Forest in the State of Nebraska, and for other purposes, having considered the same, reports favorably thereon with an amendment to the text and recommends that the bill as amended do pass.

The amendment is as follows:

On page 4, line 24 strike the words, "or reference".

PURPOSE OF THE MEASURE

The purpose of S. 816 as ordered reported is to designate two separate wilderness areas containing approximately 14,700 acres of national forest land in the State of Nebraska for inclusion in the National Wilderness Preservation System. It also releases all other National Forest System land in Nebraska from further consideration for wilderness, pending revision of initial forest management plans.

BACKGROUND AND NEED

The Forest Service inventoried approximately 15,448 acres of roadless lands in Nebraska during the Second Roadless Area Review and Evaluation (RARE II). As a result of that evaluation, the U.S. Department of Agriculture recommended wilderness designation for approximately 7,360 acres of the Pine Ridge area and nonwilderness for approximately 8,088 acres of the Soldier Creek area.

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In 1980, a Federal District Court found that the RARE II Final Environmental Impact Statement did not meet the requirements of the National Environmental Policy Act. This decision was subsequently upheld by the Forest Service Appeals. As a result of this decision the Forest Service believes that activities on areas inventoried in RARE II could be subject to administrative and judicial review. This causes uncertainty concerning the Forest Service's ability to plan for and manage the national forest—especially those lands inventoried and studied in the RARE II process.

S. 816 seeks to resolve the RARE II uncertainty in Nebraska by designating certain National Forest System lands in the State wilderness and by making other lands available for other multiple uses.

Legislative History

S. 816 was introduced by Senator Exon on March 28, 1985. On June 6, 1985, Senator Zorinsky was added as a cosponsor. A hearing in Washington, D.C. before the Subcommittee on Public Lands, Reserved Water and Resource Conservation was conducted on June 20, 1985. The Administration has recommended that S. 816 be enacted.

At a business meeting on July 30, 1985, the Senate Committee on Energy and Natural Resources ordered S. 816, favorably reported.

Committee Recommendations and Tabulation of Votes

The Senate Committee on Energy and Natural Resources, in open business session on July 30, 1985, by a unanimous vote of a quorum present recommends that the Senate pass S. 816.

The rollcall vote on reporting the measure was 16 yeas, 0 nays as follows:

YEAS	NAYS
Mr. McClure	
Mr. Hatfield [1]	
Mr. Weicker	
Mr. Domenici [1]	
Mr. Wallop	
Mr. Warner	
Mr. Murkowski	
Mr. Nickles	
Mr. Hecht	
Mr. Evans [1]	
Mr. Johnston	
Mr. Bumpers	
Mr. Ford	
Mr. Bradley	
Mr. Bingaman [1]	
Mr. Rockefeller	

[1] Indicates vote by proxy.

Committee Amendments

A technical change was made on page 4 to delete two words, which were inadvertently included from language in other wilder-

ness bills. Since there are no remaining RARE II inventory areas on National Forest System land in Nebraska which have not been addressed by S. 816, the reference is not needed.

Section-by-Section Analysis

Section 1 contains the short title of S. 816: Nebraska Wilderness Act of 1985.

Section 2 designates two areas, Pine Ridge and Soldier Creek as wilderness areas totaling approximately 14,700 acres.

Section 3(a) protects valid existing rights and provides for management of the two areas under the Wilderness Act.

Section 3(b)(1) provides for livestock grazing to continue in the proposed areas in accordance with section 4(d)(4) of the Wilderness Act and section 108 of Public Law 96–560.

Section 3(b)(2) requires the Secretary of Agriculture to review Departmental policies, practices, and regulations related to livestock grazing to insure they conform with the intent of Congress as expressed in the Wilderness Act and section 108 of Public Law 96–560.

Section 4 is a standard clause making the maps the documents of record for the establishment of wilderness boundaries.

Section 5 contains standard release language for National Forest System lands not designated wilderness in Nebraska by this Act. The release provision conforms with the compromise language included in the various wilderness bills enacted by the Congress last year.

Cost and Budgetary Considerations

The Committee does not intend that this measure (S. 816) authorize any additional budget authority for either fiscal year 1985 or fiscal year 1986 than that otherwise already available to the Department of Agriculture.

The Committee intends that if any fiscal year 1985 or 1986 costs are incurred from implementation of this bill that they will be absorbed within funds otherwise available to the Department of Agriculture.

The following estimate of the cost of this measure has been provided by the Congressional Budget Office.

U.S. Congress,
Congressional Budget Office,
Washington, DC, July 30, 1985.

Hon. James A. McClure,
Chairman, Committee on Energy and Natural Resources, U.S. Senate, Dirksen Senate Office Building, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has reviewed S. 816, the Nebraska Wilderness Act of 1985, as ordered reported by the Senate Committee on Energy and Natural Resources, July 30, 1985.

The bill would add approximately 14,700 acres of National Forest System lands in Nebraska to the national wilderness preservation system. Based on information from the National Forest Service, CBO estimates that additional costs to the federal government for

surveying, planning, and related activities necessary to implement the wilderness withdrawals will be approximately $70,000 over the five fiscal years beginning with 1986.

The National Wilderness Preservation Act stipulates that all timber located in units of the national wilderness preservation system be removed from the timber base of the national forest in which it is located. This results in a reduction of the annual potential yield of the forest. However, CBO does not expect the reduction in the timber base that would occur under S. 816 to significantly decrease federal timber receipts.

Lands designated as wilderness are also withdrawn from mineral activity under the terms of the National Wilderness Preservation Act. No significant loss of mineral receipts is expected to result from this bill, however, because mineral resources can be removed under valid existing rights.

Enactment of this bill would not affect the budgets of state and local governments.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,

Sincerely,

RUDOLPH G. PENNER.

REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of Rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out S. 816, to designate certain lands in the State of Nebraska for inclusion in the National Wilderness Preservation System.

The bill is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsibilities on private individuals and businesses.

No personal information would be collected in administering the program. Therefore, there would be no impact on personal privacy.

Little, if any, additional paperwork would result from the enactment of S. 816 as reported.

EXECUTIVE COMMUNICATIONS

The pertinent legislative report received by the Committee from the Department of Agriculture setting forth executive agency recommendations relating to S. 816 is set forth below:

DEPARTMENT OF AGRICULTURE,
OFFICE OF THE SECRETARY,
Washington, DC, June 19, 1985.

Hon. JAMES A. MCCLURE,
Chairman, Committee on Energy and Natural Resources, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: As you requested, here is our report on S. 816, a bill "To establish the Pine Ridge Wilderness and Soldier Creek Wilderness in the Nebraska National Forest in the State of Nebraska, and for other purposes."

The Department of Agriculture recommends that S. 816 be enacted.

Section 2 of S. 816 would designate two new wildernesses totaling 14,700 acres. Both the 6,600-acre Pine Ridge proposal and the 8,100-acre Soldier Creek proposal are on the Nebraska National Forest. Section 3 provides that these two wildernesses would be administered according to the provisions of the Wilderness Act. Section 3 also assures that grazing use established prior to the date of the enactment of S. 816 would be administered according to the Wilderness Act and Section 108 of Public Law 96-560, and also directs the Secretary of Agriculture to review all policies, practices, and regulations regarding livestock grazing on wilderness areas in Nebraska to insure that the intent of Congress is followed with regard to grazing.

Section 5 provides that other National Forest System lands in the State of Nebraska that were reviewed in RARE II would be released for multiple uses other than wilderness. Further review of wilderness suitability would not be done again until Forest plans are revised, which would ordinarily occur every 10 years, or at least every 15 years. This is the compromise release language adopted in the 98th Congress.

At present, there are no designated wildernesses on National Forest System land in the State of Nebraska. The 4,600-acre Fort Niobrara National Wildlife Refuge is designated wilderness and is administered by the Secretary of the Interior. The Pine Ridge and Soldier Creek roadless areas were the only two Nebraska areas inventoried in the Second Roadless Area Review and Evaluation. The Pine Ridge roadless area was recommended for wilderness, and the Soldier Creek roadless area was identified for nonwilderness uses. This recommendation and decision were not reevaluated in the Forest plan for the Nebraska National Forest because the plan was in its final stage of preparation when direction was given to reevaluate the RARE II roadless areas as a result of the Ninth Circuit Court decision in the *California* v. *Block* case. Development activities have not been planned in either Pine Ridge or Soldier Creek proposals under the 1984 Forest plan and based upon on information we now have we believe there is low probability that any mineral development will occur. Absent congressional action, these two areas will be managed to maintain their suitability as wilderness until they are reevaluated in the next planned revision of the Forest plan, or until they are evaluated in an environmental impact statement if a development activity were proposed prior to the Forest plan revision.

The Department continues to recommend that the Pine Ridge proposal be designated wilderness as originally recommended by RARE II. The Department does not object to designation of the Soldier Creek proposal for a number of reasons. The Soldier Creek wilderness proposal includes most of the upper part of the Soldier Creek drainage. The lower portion of the Soldier Creek drainage is nearly all included within the Fort Robinson State Park. Both the Federal and State land in the Soldier Creek area have historical value. Fort Robinson, the site of a military installation in the late 1800's, was located near the confluence of Soldier Creek and White River. Soldier Creek which runs through the area is one of the

more important trout fisheries in the State. The area proposed for wilderness is used by many recreationists because of its unique characteristics and its proximity to the State park. Many individuals and organizations in Nebraska also consider it the prime "wild" area in the State. Based on the present character and use of the area, including indications that there is low probability for mineral development, the Department does not object to Soldier Creek being designated as wilderness.

We support this bill and estimate that the surveying, planning, and related activities necessary to implement the wilderness designations in this bill would cost approximately $70,000 over the next 5 years.

The Office of Management and Budget advises that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

JOHN R. BLOCK, *Secretary.*

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of Rule XXVI of the Standing Rules of the Senate, the Committee notes that no changes in existing law are made by the bill, S. 816, as reported.

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